

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

JAN - 6 2016

Clerk, U.S. District Court
District Of Montana
Billings

ESTATE OF WILLIAM and ARLEIN
HEIN,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,
DEPARTMENT OF THE INTERIOR,
STATE OF MONTANA, and all other
Persons, unknown, claiming or who
might claim any right, title, estate, or
interest in or lien or encumbrance upon
the real property described in the
complaint adverse to Plaintiff's title,
whether the claim or possible claim is
present or contingent,

Respondents.

CV 14-55-BLG-SPW

OPINION and ORDER

Before the Court are United States Magistrate Judge Carolyn Ostby's Findings and Recommendations filed on November 18, 2015. In the Findings and Recommendations, Judge Ostby recommends that this Court deny the United States' motion to dismiss (doc. 36) to the extent it seeks dismissal based on Rule 12(b)(1) but grant the motion to the extent it seeks dismissal based on Rule 12(b)(6) with leave to amend.

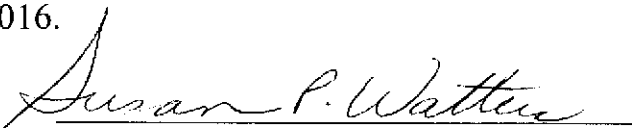
Pursuant to 28 U.S.C. § 636(b)(1), the parties were required to file written objections within 14 days of the filing of Judge Ostby's Findings and Recommendations. No objections were filed. When neither party objects, this Court must still review Judge Ostby's conclusions for clear error. Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000). After reviewing the Findings and Recommendations, this Court does not find that Judge Ostby committed clear error.

Accordingly, IT IS HEREBY ORDERED:

1. Judge Ostby's Findings and Recommendations (Doc. 44) are ADOPTED IN FULL.

2. The United States' Motion to Dismiss (doc. 36) is DENIED to the extent it seeks dismissal based on Rule 12(b)(1) but GRANTED to the extent it seeks dismissal based on Rule 12(b)(6), with leave to amend.

DATED this 5th day of January 2016.


SUSAN P. WATTERS
United States District Judge